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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,788	01/16/2004	Thomas T. Yamashita	YAMA-009	8159

24353 7590 04/06/2006

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/759,788	YAMASHITA, THOMAS T.	
	Examiner	Art Unit	
	NEIL LEVY	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 21-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-37 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Applicant's election with traverse of Group I species of sodium aluminofluorides, sucrose, nitrogen, zinc, folic acid and lignosulfate-----

in the reply filed on 1/23/06 is acknowledged. The traversal is on the ground(s) that it would not be burdensome to search the other inventions----. This is not found persuasive because ---

For reasons of record, examiner finds it burdensome to extend the searches and examination.

The requirement is still deemed proper and is therefore made FINAL.

Claims 21-37 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/23/06.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4,20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

. Abbreviation should be spelled out (EDD, EDTA).

We find no support for lignosulfate; only sulfonates.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated Yamashita 633672.

See claims 10-15-the instant formulation, absent pesticide, at instant concentrations, except for trace minerals. However, these are disclosed at example 1-0.02% boron, while pesticides are at example 4. Also, a number of the required macro/micro nutrients are pesticidal- sulfur, zinc, boron, iron, copper, citric acid, for example, as antifungal, antimicrobial, molluscicidal actives.

Claim 1-9, 11, 12, 18 rejected under 35 U.S.C. 102(b) as being anticipated by Amburn: 3161497.

The instant claim 4 inorganic-potassium cyanate is shown with carbon skeleton energy components of corn gluten (col 3, top; col 4, line 56; col 5, line 40) at instant concentration (col 6). Binders provide phytotoxicity reduction (col 5, lines 40-50). Although sucrose is not specified, some would inherently be present in the corn processing, as would the amino acids as components of the gluten. Macro and micro nutrients, and complexing agents-urea, (col 6, bottom) also a macronutrient, and fertilizers-macro and micro nutrients (col 4, lines 56-60).

Claim 1-6, 8, 9, 11, 12, 14, 18-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Klepping 3789122.

See example 29, 31, 34 actives can be 1-90% (col 29, lines 33-35). Phytotoxicity reduction is achieved with com[plexes (col 1, lines 22-26; col 2) including zinc, manganese (example 29) and sodium ligninsulfonates are used (col 27, lines 15-18, example 27, 28). Fertilizers are included-calcium, manganese,\ (col 29, lines 22-28).

Claim 1-6, 8, 9, 11, 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Wommack 4018926.

Sucrose (col 18, lines 47-48) with instant pesticides (col 21-23) are taught, as are feeds-corn-sucrose sources, with only 0.01-0.25% pesticides (col 17, top). Fertilizers-the instant macro/micro nutrients, are included (col 21, lines 20-25), as is sodium ligninsulfonate at 1% (example 12) and calcium (example 18).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY

NEIL S. LEVY
PRIMARY EXAMINER